

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

MICHAEL LEE MCDANIEL, )  
Plaintiff, )  
v. )  
ERIE COUNTY COURT OF COMMON )  
PLEAS, et al., )  
Defendants. )  
Civil Action No. 12-7 Erie

**MEMORANDUM ORDER**

This civil rights action was received by the Clerk of Court on January 12, 2012 and was referred to United States Magistrate Judge Susan Paradise Baxter for report and recommendation in accordance with the Magistrates Act, 28 U.S.C. § 636(b)(1), and Rules 72.1.3 and 72.1.4 of the Local Rules for Magistrates.

The Magistrate Judge's Report and Recommendation [ECF No. 43], filed on January 29, 2013, recommended that: the motion to dismiss filed by Erie County Executive/Council [ECF No. 24] be granted; the motion to dismiss filed by the Erie County Court of Common Pleas [ECF No. 28] be granted; the motion to dismiss filed by Erie County Regional Contract Jail Albion and the Pennsylvania Department of Corrections [ECF No. 30] be granted; and the motion to dismiss filed by the Inmate General Welfare Fund [ECF No. 38] be granted. It was further recommended that to the extent the Plaintiff's brief in opposition sought to amend his complaint to add claims against new individual defendants [ECF No. 34], such request be denied on the basis of futility. The parties were allowed fourteen (14) days from the date of service to file objections. Plaintiff filed objections on February 8, 2013. [ECF No. 44].<sup>1</sup> After *de novo*

<sup>1</sup> Plaintiff's objections that there was no written sentencing order and that his sentence ran afoul of *Apprendi v. New Jersey*, 530 U.S. 466 (2000) have been considered and rejected by the Court in the Plaintiff's habeas corpus action. See *McDaniel v. Erie County Court of Common Pleas*, et al., Civil Action

review of the documents in the case, together with the Report and Recommendation, and objections thereto, the following order is entered:

AND NOW, this 15<sup>th</sup> day of February, 2013;

IT IS HEREBY ORDERED that the motion to dismiss filed by Erie County Executive/Council [ECF No. 24] is GRANTED; the motion to dismiss filed by the Erie County Court of Common Pleas [ECF No. 28] is GRANTED; the motion to dismiss filed by Erie County Regional Contract Jail Albion and the Pennsylvania Department of Corrections [ECF No. 30] is GRANTED; and the motion to dismiss filed by the Inmate General Welfare Fund [ECF No. 38] is GRANTED.

IT IS FURTHER ORDERED that the Plaintiff's motion to amend the complaint to add claims against new individual defendants [ECF No. 34] is DENIED.<sup>2</sup>

The Report and Recommendation [ECF No. 43] of Magistrate Judge Baxter, filed on January 29, 2013 is adopted as the opinion of the Court.

The Clerk is directed to mark the case closed.

s/ Sean J. McLaughlin  
United States District Judge

cm: All parties of record  
Susan Paradise Baxter, U.S. Magistrate Judge

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No. 12-58 Erie, in the United States District Court for the Western District of Pennsylvania. [ECF No. 30], [ECF No. 33], and [ECF No. 35].

<sup>2</sup> To the extent Plaintiff also seeks summary judgment, the motion is denied.